

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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NURY CHAVEZ,

Plaintiff,

-against-

SUBURBAN BUS TRANSPORTATION, et al.,

Defendants.
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LINDSAY, Magistrate Judge:

Before the court is plaintiff's motion for leave to amend her complaint. Defendants oppose the application.

A brief review of the procedural history of this case is necessary to address plaintiff's application. Plaintiff Nury Chavez commenced this employment action on May 14, 2012 against defendants Suburban Bus Transportation and John Caspe, alleging principally discrimination, sexual harassment, retaliation and a hostile work environment. By Order dated May 16, 2012, Magistrate Judge Boyle issued an order scheduling an initial conference on September 28, 2012. Defendants filed a letter application dated August 1, 2012 seeking a pre-motion conference before the district court for leave to file a motion to dismiss the complaint pursuant to Fed. R. Civ. P. 12. Thereafter, on September 18, 2012 defendants informed Magistrate Judge Boyle that plaintiff had filed criminal charges against defendant Caspe and moved to stay discovery pending the outcome of the criminal trial. Judge Boyle granted the motion and adjourned the initial conference sine die pending the outcome of the underlying criminal action in the Nassau County District Court. By Order dated September 27, 2012, Magistrate Judge Boyle scheduled a telephone conference on April 17, 2013.

On April 5, 2013, plaintiff moved for leave to file an amended complaint. During the telephone conference on April 17, 2013, Judge Boyle scheduled an initial conference on May 15, 2013. By letter application April 19, 2013, defense counsel informed the district court that defendant Caspe was acquitted of all criminal charges in the underlying criminal action, they were prepared to represent Mr. Caspe in this litigation, and were further prepared to move forward with a briefing schedule on their motion to dismiss. On May 10, 2013, defendants requested that discovery be limited to document discovery. By Order dated May 13, 2013, Judge Boyle denied the motion for leave to file an amended complaint without prejudice and permitted plaintiff an opportunity to renew her application no later than May 20, 2013. Although plaintiff failed to renew within the allotted time, Judge Boyle scheduled a status conference on June 18, 2013 and granted plaintiff a second opportunity to renew her application to amend the complaint by July 2, 2013. Plaintiff moved for an extension of time to file her motion to amend the complaint by letter application dated July 15, 2013. On July 17, 2013, this action was reassigned

to the undersigned. By Order dated July 18, 2013, this court granted plaintiff's motion to extend the time to file a motion to amend the complaint to July 30, 2013. Plaintiff moved to amend the complaint on July 20, 2013. Defendants moved for an extension of time to September 6, 2013 to respond to the motion which was granted.

Under Rule 15(a)(1)(B) of the Federal Rules of Civil Procedure, a plaintiff may amend her complaint "once as a matter of course within . . . 21 days after service of a responsive pleading or [within] 21 days after service of a motion under Rule 12(b), (e), or (f)." Fed. R. Civ. P. 15(a)(1)(B). To date, no answer has been filed nor has a motion to dismiss been served by the defendants. As defendants have yet to respond to the complaint, plaintiff may amend as a matter of course. Accordingly, the motion to amend is denied as moot. The plaintiff is directed to file the Amended Complaint as a separate docket entry.

Dated: Central Islip, New York
November 19, 2013

SO ORDERED:

_____/s_____
ARLENE R. LINDSAY
United States Magistrate Judge